

Friday, 15 November 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDING IN CHAMBERS

On an

Application of the following Accused for
the production of witnesses and documents under the
Charter:

Paper # 531 of KIMURA, Heitaro;
Paper # 538 of KOISO, Kuniaki;
Paper # 553 of KAYA, Okinori;
Paper # 533 - Application of prosecution
under Rule 6b(1) respecting prosecution documents
Nos. 15, 102, 220, et al; and
Paper # 540 - Application of prosecution
under Rule 6b(1) respecting prosecution documents
Nos. 6250, 6251, et al.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

JACK GRFENBERG
Chief Court Reporter
IMTFFE

Appearances:

For the Prosecution Section:

Captain J. J. ROBINSON, USNR;
Commander C. T. COLE, USNR; and
Mr. A. T. LAVERGE

For the Defense Section:

MR. MICHAEL LEVIN and MR. R. S.
RUTCHICK, Counsel for the Accused
KAYA, Okinori;

MR. WM. LOGAN, Jr., MR. S. SAMMONJI and
Mr. UBA, Counsel for the Accused
KOISO, Kuniaki, with Mr. A. W.
BROOKS as adviser;

MR. J. G. HOWARD and MR. T. SHIOHARA,
Counsel for the Accused KIMURA,
Heitaro; and

MR. JOHN G. BRANNON, Counsel for the
Accused NAGANO.

For the Office of the General Secretary, IMTFE

MR. CHAS. A. MANTZ, Clerk of the Court;
MR. H. W. DELANEY, Deputy Clerk of the
Court; and
JUDGE F. H. DELL, Legal Advisor.

The proceeding was begun at 0903.

Paper
533

THE PRESIDENT: This is an application on behalf of the prosecution under Rule 6b (1) in respect of prosecution documents 15, 102, 220, 468, 587, 821, 823, 1038, 1204, 1555, 1621, 1987, 2402, 2612 and 2674.

Have you agreed on most of them?

MR. LEVIN: Mr. President, that is, I believe, No. 533.

THE PRESIDENT: 533?

CLERK OF THE COURT: 533.

THE PRESIDENT: The number of the paper, yes: 533.

MR. LEVIN: I think we can dispose of that very easily by reference to this application. There is no objection to any of the English portions which it is desired to process.

821, in Japanese -- there is no objection except the date should be given and a cover of years given at the beginning of this statement -- month and date is given, and we are advised by Japanese counsel that they desire this entire date. I do not quite understand what it is, but that is the note that I have from Dr. KIYOSÉ.

Item 1038: They omit the word "applause." There are many conceptions of the word "applause," indicating that a great majority of the members of the House agreed to some of the statements; and they desire to have that word in. I imagine there will be no objection to that.

And 1024: The preamble of this book should be --

THE PRESIDENT: 1024?

MR. LAVERGE: There is no 1024.

THE PRESIDENT: 1204.

MR. LEVIN: It says "1024" in Japanese in the memorandum I have. It is 1224. In any event, it is a preamble, that is, a book, is it not? They want the preamble of this book to be reproduced and attached with the excerpt.

MR. LAVERGE: It is not quite clear to me whether this is 1204 or 2402. It might be anything.

THE PRESIDENT: 1204 is an address by MATSUOKA in the Diet. There is no 1024.

MR. LEVIN: I have a note from Dr. KIYOSÉ: "1024" in Japanese. "Preamble of this book should be reproduced and attached to the excerpt." Maybe we can check that, and maybe we can agree --

MR. LAVERGE: We will not have any difficulty

in agreeing. We will have to find out what it is.

MR. LEVIN: Maybe we had better check that and see what that is.

Now, with the exception -- it is 1204. My secretary made a mistake in copying. 1204 is the one. My secretary made a mistake in copying.

THE PRESIDENT: That is MATSUOKA's address in the Diet.

MR. LEVIN: Yes. They want the preamble of the book to be reproduced and attached to the excerpt.

MR. LAVERGE: It is a correction of Foreign Office announcements. I do not think there is any preamble to the book.

MR. LEVIN: It could not be very lengthy. In might say in this connection, Mr. President, that -- and I do not want to be harping on what I have said before -- that it is rather difficult for us to examine in detail all of these excerpts. I left the courtroom yesterday at 3:30 in the afternoon to study them, and I could only make a cursory examination of what the prosecution desired. And, on that cursory examination, I based my report and consulted with my associates on the Rules Committee.

It is possible, between now and the time these are offered in evidence, that on further examination there might be something which we might want processed. I do not know; but I should like to reserve at least the privilege of making an application in the event some situation develops. It is just a physical impossibility for us to, as I said before, examine these in great detail. Mr. Logan has examined many of these from time to time, and I have tried to examine them; and, as I say, I was only able to do so late yesterday afternoon, and I am not entirely satisfied with the investigation I made. But, on the basis of what little investigation I did make, I am ready to have the Court enter the Order such as I have indicated.

MR. LAVERGE: I would like to add that they have been in for a full week.

MR. LEVIN: There is no question about that at all, Mr. President. We make no point on that. It is simply a matter of our time.

THE PRESIDENT: Have you anything to say, Mr. Logan?

MR. LOGAN: No, I think that will be all right.

THE PRESIDENT: What is the attitude of

the prosecution?

MR. LAVERCE: Well, if the introduction to document 1204 is a short one, I would say not more than four or five pages, there is no objection. I do not think it will be more, but I would like to examine the proof.

THE PRESIDENT: I will make an Order for the inclusion of the introduction. I am sure it will not be a lengthy one. If it is, you can approach me again.

The application will be granted with that modification. Is that all?

MR. LEVIN: That is all.

Paper
540

THE PRESIDENT: The next application is on paper 540. It is an application on behalf of the prosecution under Rule 6b (1) in respect of documents 6250, 6251, 6255-A, C, D, E, F, G, H and I, and 6256-A and B.

Who appears?

CAPTAIN ROBINSON: For the prosecution, yes, sir. I think the petition contains all we care to present, sir.

THE PRESIDENT: Yes. Is there any opposition?

MR. LOGAN: Mr. Brannon here has examined these documents.

THE PRESIDENT: Mr. Brannon, yes.

MR. BRANNON: Mr. President, 6250 contains only six and a half pages, and we would like to have all of that processed if possible. It is difficult to separate just a few sentences from the parent paragraph and still retain the full meaning.

CAPTAIN ROBINSON: This is a full copy, your Honor, that has been provided here to the defense.

MR. LOGAN: Are you processing the entire document?

CAPTAIN ROBINSON: We are having it translated into Japanese; are we not?

COMMANDER COLE: It is processed fully in English, and the Japanese marked in red has been processed.

MR. BRANNON: Just the red portion?

CAPTAIN ROBINSON: Yes.

MR. BRANNON: We would like to have it.

CAPTAIN ROBINSON: We have no objection.

THE PRESIDENT: The application is granted with that modification.

MR. LOGAN: There is something else.

THE PRESIDENT: Is there something else?
What else?

MR. BRANNON: 6251. I believe it is this
book; is it not, Captain?

CAPTAIN ROBINSON: That is right.

MR. LOGAN: Pages 216 - 222.

MR. BRANNON: Because this is the remark
or remarks of Admiral NAGANO given at the London
Naval Conference, we would like to include pages
216 - 222 in order to get the full import of his
statement. The prosecution is taking only certain
paragraphs from those pages.

THE PRESIDENT: It means the addition of a
few more pages.

MR. BRANNON: About six pages, Mr. Presi-
dent.

CAPTAIN ROBINSON: No objection, sir.

MR. LOGAN: No objection to the rest of
those items on that document.

THE PRESIDENT: The application is granted
with those modifications.

The next application --

CLERK OF THE COURT: Pardon me, sir.
Gentlemen, that concludes the matters in which prose-
cution is interested. The rest of the matters con-

cern witnesses.

THE PRESIDENT: The next application --

MR. LOGAN: Pardon me, Judge. There is a matter on which I would like to speak while Captain Robinson is here, if I may.

THE PRESIDENT: Yes.

MR. LOGAN: You recall that prosecution was to furnish us with the statement of Admiral Richardson, which they have done in time. But, Admiral Richardson refers to several documents in his statement, and we have not received copies of those yet. We would like to have those as quickly as possible before he takes the stand.

You recall that he was permitted to testify by giving the statement rather than by direct examination. One of the reasons that impelled the Court to grant the application was that we would be furnished with his statement ahead of time. But, of course, just having his bare statement without the documents attached, we are not exactly in a position to fully prepare our cross-examination.

THE PRESIDENT: Some of the documents are very extensive, are they not?

MR. BRANNON: I believe these are some of them right here; aren't they?

CAPTAIN ROBINSON: That is right, yes. You have had, I suppose, most of them here for a week now in connection with this application which has been filed; and, of course, the statement was placed in the hands of the defense back at the time that the Court ordered it. That was about two months ago now.

THE PRESIDENT: Some of the documents would include battle orders, I understand.

CAPTAIN ROBINSON: Yes, that is true.

THE PRESIDENT: That would be so.

CAPTAIN ROBINSON: Yes, sir.

THE PRESIDENT: And they are very very lengthy documents.

CAPTAIN ROBINSON: Yes, sir. We plan to have that in the hands of the defence -- those that they do not already have -- by this afternoon. Of course, we do not know how soon the Admiral will take the stand. It will certainly be more than the twenty-four hour period.

THE PRESIDENT: It will not be next week?

CAPTAIN ROBINSON: Sooner than the twenty-four hour period, sir, as I understand it.

MR. LEVIN: Mr. President, I would like to call your attention in that connection: When the Liebert statement was furnished, the accompanying

documents or, rather, the exhibits in connection with that statement were attached to the document, so we had them available at the time we had the Liebert statement.

CAPTAIN ROBINSON: That is, you mean some of them, do you not; not all of them?

MR. LEVIN: I think they were practically all of them except references to data. I recall that when I cross-examined him, he offered to furnish us with the material from which he gathered his statements, and I think all of the exhibits were part of the record. As a matter of fact, they were right in the record; isn't that correct, Mr. Logan?

MR. LOGAN: That is correct; and also with respect to Mr. Ballantine, we have already received the complete statement of Mr. Ballantine and the documents referred to in his statement.

CAPTAIN ROBINSON: We will be glad to take care of Mr. Logan's request, your Honor.

MR. LOGAN: All right.

(Whereupon, the members of the Prosecution Section withdrew from the room.)

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